

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ROBERT CHARLES TILLITZ,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

Case No. C05-5144RJB  
CR94-5074RJB

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CRAIG CARRINGTON,

Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

Case No. C05-5286RJB  
CR89-88RJB

ORDER GRANTING  
PETITIONERS CERTIFICATES  
OF APPEALABILITY

This matter comes before the court on the petitioners' Notices of Appeal and requests for Certificates of Appealability. Dkt. 35 and 36. The court must consider whether to grant or deny petitioners Certificates of Appealability. *See* 28 U.S.C. 2253(c)(3). The court has reviewed the pleadings in support of and in opposition to the requests for Certificates of Appealability and the record herein.



that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 120 S.Ct. at 1604.

### DISCUSSION

Mr. Carrington and Mr. Tillitz contend that they have appealed both this court's decisions on the merits and the court's characterization of their motions as successive motions under 28 U.S.C. § 2255. Specifically, they request that the court grant Certificates of Appealability on the following issues:

1. As set forth in the district court's Order dated November 3, 2005, and as was done in *United States v. Crawford*, 422 F.3d 1145 (9th Cir. 2005), whether extraordinary circumstances in this case, including the sentencing judge's statements regarding his disagreement with the United States Sentencing Guidelines, merit the recall of the mandate.
2. Whether Mr. Carrington and Mr. Tillitz are entitled to resentencing pursuant to 18 U.S.C. §3582(c)(2) and *United States v. Booker*, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005).
3. Whether Mr. Carrington and Mr. Tillitz are entitled to resentencing pursuant to a writ of *audita querela* and *Booker*.
4. Whether Mr. Carrington and Mr. Tillitz' motions pursuant to 18 U.S.C. § 3582(c)(2) and request for a writ of *audita querela* for resentencing under *Booker* should be construed as successive 28 U.S.C. § 2255 motions.

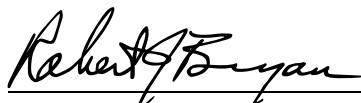
The issues identified above are adequate to deserve encouragement to proceed further. Further, jurists of reason would find it debatable whether the district court was correct in its procedural ruling. The court should grant Certificates of Appealability on all of the issues requested by Mr. Carrington and Mr. Tillitz.

Accordingly, it is hereby

**ORDERED** that Mr. Carrington and Mr. Tillitz' motions for Certificates of Appealability are **GRANTED** on the issues identified above.

The Clerk is directed to send a copy of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

DATED this 2<sup>nd</sup> day of December, 2005.



Robert J. Bryan  
United States District Judge

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